

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Crim. No. 03-93-75(2) (PAM)

Civ. No. 03-96-309 (PAM)

Plaintiff,

v.

MEMORANDUM AND ORDER

Alphonso Prince,

Defendant.

This matter is before the Court on Defendant Alphonso Prince's Motion pursuant to 28 U.S.C. § 2255. For the following reasons, the Motion is denied.

BACKGROUND

Defendant was convicted by a jury on federal drug charges and firearms charges on October 4, 1993. In April 1994, Defendant was sentenced to a term of 322 months with five years of supervised release to follow. He appealed his sentence and conviction, which the Eighth Circuit Court of Appeals affirmed. See United States v. Lockett, 46 F.3d 1137 (8th Cir. 1995) (table op.). In April 1996, Defendant filed a motion to vacate or correct his sentence under 28 U.S.C. § 2255. The Court granted the petition in part and resented Defendant to 322 months. On February 14, 2001, Defendant moved for a modification of his term of imprisonment under 18 U.S.C. § 3582, which the Court denied. On August 20, 2001, the Eighth Circuit denied Defendant's petition to file a successive habeas application.

DISCUSSION

Defendant brings this current Motion pursuant to Blakely v. Washington, 542 U.S. 296

(2004), and United States v. Booker, 543 U.S. 220 (2005), arguing that his sentence was enhanced for conduct neither charged in the Indictment nor found beyond a reasonable doubt by a jury. Defendant has submitted no particular facts supporting his Motion. However, because Defendant is essentially challenging his sentence, the Court will construe the Motion as one for relief under 28 U.S.C. § 2255.

Defendant has already filed a § 2255 motion. He has not been authorized to file a second or successive motion by the Eighth Circuit Court of Appeals, and the present Motion is therefore denied. See 28 U.S.C. §§ 2244, 2255. In addition, Defendant's Motion fails because Booker and Blakely do not apply to criminal convictions that were final before those cases were decided. See Never Misses A Shot v. United States, 413 F.3d 781, 783 (8th Cir. 2005). Defendant's conviction became final well before the Supreme Court's decisions in Booker and Blakely, and his Motion is accordingly denied on this basis as well.

CONCLUSION

Defendant's arguments are without merit. Accordingly, **IT IS HEREBY ORDERED** that his Motion pursuant to 28 U.S.C. § 2255 is **DENIED**.

Dated: January 19, 2006

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge